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PACIFIC TELESIS
Group-Washington

May 11, 1992

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Ms Searcy:

Re: *CC Docket No. 92-26*

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies of its "*Reply Comments*" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Celia Nogales

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers.	)	CC Docket No. 92-26

REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL

Pacific Bell and Nevada Bell (the "Pacific Companies") file these reply comments in the above-captioned proceeding. Many issues were raised by commenters. The Pacific Companies will respond to some of the key statements made by various parties.

Many parties focused on the need for flexibility in complaint cases to accommodate the multitude of issues which may arise.[1] Public Service Commission of District of Columbia recognizes that a bifurcation of issues may not always be desired, and that liability and damages issues may not be easily

[1] Michael Hirrel, for example, notes that timing of filing briefs and page limits for briefs are issues which should not be rigidly followed, but should allow for variations depending on the particular case. Hirrel, p. 6.

separated.[2] The Pacific Companies agree and urge the Commission to allow the staff some discretion in determining when bifurcation is appropriate. US West also notes that the complaint rules should be flexible to allow for judicious resolution of the issues.[3] US West suggests that the Commission adopt a rule which would give rise to a scheduling conference after responsive pleadings have been filed. The scheduling order resulting from the conference would set forth dates for discovery, issue identification, briefing requirements and other pre-trial issues and minimize conflict over discovery issues. Also, this order would allow the Commission with help from the parties, to tailor a discovery and briefing plan appropriate for the issues presented. The Pacific Companies add that, pursuant to its suggestion raised in the comments, the scheduling order also encompass assigning the case to an Administrative Law Judge ("ALJ") for fact-finding and resolution, if appropriate.

Ameritech also supported assigning fact-oriented disputes to an ALJ.[4] Ameritech, however, suggests that request for admissions be used to determine if fact-based issues exist that need to be resolved by an ALJ. The Pacific Companies oppose this suggestion since requiring requests for admission will

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2 PSC of District of Columbia, p. 5.

3 US West, p. 12.

4 Ameritech, p. 7.

simply delay the complaint and inject another layer of delay into the proceedings. After a status conference, where the parties address the issue, the Commission should be able to determine whether credibility or other fact-finding issues need to be decided before resolution of the complaint. If so, an ALJ can be assigned and a trial type hearing held.

Various parties seek expansion of the use of self-executing discovery such as production of documents and requests for admissions.[5] The Pacific Companies do not support this request. As pointed out by many commenters, Commission proceedings are substantially different than complaints before a federal district court.[6] The potential for abuse of discovery is much greater in an action pending before the Commission where there is no discovery master, no clear rules on admissibility of evidence, and long delays in ruling on motions. The Pacific Companies believe that if the Commission must review the discovery request before it is sent to the other party, there is a better chance that the propounding party will ask for relevant, precise information rather than a fishing expedition. And, while the ability to object based on grounds such as relevance helps to protect the responding party from wasting some resources in replying, relevance is not always adequate protection. For

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[5] NATA, p. 5; Sprint, p. 5; Williams, p. 3.

[6] Nynex, p. 3.

example, in one complaint case, Pacific Bell was served with a request for production of documents seeking basically all documents relating to equal access implementation. While those documents may be relevant to an issue in the case, Pacific Bell obviously cannot comply with such a request. By requiring Commission approval before any request is served, the Commission can balance the need for the information with the burdensomeness of the request.

The Commission has proposed to allow the Commission staff to issue orders verbally, and then memorialize the order in writing. The Pacific Companies agree with Ameritech, Bell Atlantic, US West, and Allnet[7] that for any order, especially those imposing a time limit, the time period not begin to run until the written order is released. Otherwise, it may be unclear exactly what was ordered. Given that status conferences are not stenographically recorded, the written order is the only evidence of the ruling.

Allnet suggests that all documents referred to in pleadings be attached to those pleadings.[8] The Pacific Companies oppose this suggestion since it would lead to

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[7] Ameritech, p. 6; Bell Atlantic, p. 5; US West, p. 4; Allnet, p. ix.

[8] Allnet, p. ii. Allnet justifies this proposal by claiming that defendants tend to "sandbag" documents. The Pacific Companies deny that they unreasonably withhold documents.

voluminous filings without justification.[9] For example, the Bellcore LATA Switching System Generic Requirements ("LSSGR") forms the specifications for the network. As such, the LSSGR is often referred to in complaints dealing with network or interconnection issues. Yet the LSSGR is composed of many binders of material. Attaching copies of these binders to a pleading would serve no useful purpose.

The Commission has proposed that discovery responses not be filed with the Commission.[10] The Pacific Companies do not oppose this rule if the Commission also orders that briefs be filed. If briefs are not required in a case, and any discovery which has occurred is also not filed with the Commission, then there is no way for the Commission to adequately decide the case because there is an incomplete record. Either all discovery should be filed with the Commission, or as a better rule, parties should be required to file briefs before the Commission rules on a matter. The brief can include affidavits containing key items from discovery, such as documents, key portions of deposition transcripts, or other admissions. The Pacific Companies suggest that giving parties the opportunity to present the evidence and argue the case based on the evidence is more helpful to the Commission than simply filing all discovery with the Commission.

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[9] Further in these days of environmental awareness, needless photocopying of documents is untenable.

[10] NPRM at 17.

Many parties have commented that it will be difficult, if not impossible to comply with the proposal to file an answer, preliminary motions or possibly a summary judgment motion within 20 days of service of a complaint.[11] The Pacific Companies also anticipate that this will cause serious problems, especially given the Commission's directive that it expects pleadings to be more than the "notice" pleadings required by the Federal Rules.

Finally, many commenters made suggestions to upgrade the proposed rules regarding discovery and use of proprietary information.[12] Commenters suggested that the rules should make clear that proprietary information should only be used for the purpose of prosecuting or defending the complaint, and should only be released to those who are involved in the case.[13] Bell Atlantic suggests that the rules should be flexible enough so that the parties can agree to modify the rules, if needed.[14] The Pacific Companies agree with all of these upgrades.

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[11] BellSouth, p. 2; MCI, pp. 7-8; United Video, p. 4.

[12] Allnet, p. xi; United Video, p. 16; Bell Atlantic, p. 5; AT&T, p. 4.

[13] Allnet, p. xii; Bell Atlantic, p. 4; AT&T, p. 4; Southwesten Bell, p. 4.

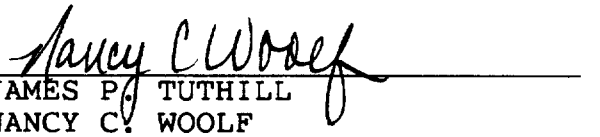
[14] Bell Atlantic, p. 5.

CONCLUSION

The Commission should adopt changes to the complaint rules to assist it in making fair judicious decisions. However, the Commission should take care to balance the needs of the parties with the interests of judicial efficiency.

Respectfully submitted,

PACIFIC BELL
NEVADA BELL



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Date: May 11, 1992

CERTIFICATE OF SERVICE

I, S. B. Ard, hereby certify that copies of the foregoing "REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL" in proceeding CC Docket 92-26, were served by hand or by first-class United States mail, postage prepaid, upon the parties appearing on the attached service list this 11th day of May, 1992.

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